



FREQUENTLY ASKED QUESTIONS

What the Domestic Partner Act Means for FDR Professionals
January 13, 2005

With many thanks to Deborah Wald for her legal responses.

Q. How long have people been able to register as domestic partners?

A. People have been registering as domestic partners since 2000.

Q. How do parents establish parentage through the Uniform Parentage Act? What is involved? Who can apply?

A. The Uniform Parentage Act (UPA) was adopted in the 1970s specifically to provide “substantive legal equality for children regardless of the marital status of their parents....” (9B West’s U. Laws Ann. (1987) U. Parentage Act, prefatory note, p. 289.) Under the UPA, there are a number of ways to establish parentage. The most common ways are found in Family Code sections 7611 and 7613. They include (1) getting married to—or attempting to marry—the mother; (2) receiving the child into the home and holding it out as one’s natural child; or (3) consenting to the insemination of one’s wife with donor sperm.

Additionally, in 1998, the Court of Appeal, Fourth Appellate District, found in *In re Marriage of Buzzanca* that a heterosexual, married couple who used medical technologies to conceive a child that had no genetic connection to either one of them *and* was carried by a surrogate were still the child’s parents based on “intentional procreation”—that is, the intentional conception of a child with the intent to raise that child. This case has been used as a basis for adding “intentional procreation” to the list of ways to establish parentage through the Uniform Parentage Act, and a number of same-sex couples—especially gay men using surrogates—have established legal parenthood in this manner.

Finally, in *Nicholas H. v. Superior Court*, the California Supreme Court found that a man who had lived with a child and raised him from birth was his legal father, under Family Code section 7611(d) (the “holding out” provision), even though the man had always known he wasn’t Nicholas’s biological father and had admitted this fact to the court when asked. Same-sex parents had high hopes that this decision would apply to their families and allow legal parenthood to second parents who have raised children from birth without adopting them. However, in 2004, the Court of Appeal, Third Appellate District, ruled that *Nicholas H.* did not apply to same-sex couples. This same court—plus the Court of Appeal, Second Appellate

District—also ruled that the “intentional procreation” theory of *Buzzanca* was not available to same-sex couples attempting to establish parentage under the Uniform Parentage Act. These decisions are currently being reviewed by the California Supreme Court.

One analysis of AB 205 holds that all of the methods for establishing parentage under the UPA used by heterosexual married couples (*e.g.*, the “marital presumptions” of Family Code sections 7611(a) and 7613(a)) should be available to same-sex couples. The bigger question remains whether the California Supreme Court will rule that “unmarried” (*i.e.*, un-domestic-partnered) same-sex couples will have access to the same methods for establishing parenthood under the UPA that are available to unmarried heterosexual couples. Given that the UPA was adopted specifically to provide “substantive legal equality for children regardless of the marital status of their parents,” attorneys involved in the litigation are cautiously optimistic that once the Supreme Court rules on the pending cases, the UPA will become available as a means of establishing parentage for children born to same-sex couples regardless of whether the couples are domestic partners.

In order to establish parenthood under the UPA, one files a Petition to Establish Parental Relationship (FL-200) and a myriad of accompanying forms with the superior court. See the California Courts Self-Help Web site section on “Go to Court to Establish Parentage Yourself” for step-by-step instructions on the process.

<http://www.courtinfo.ca.gov/selfhelp/family/parentage/gotocourt.htm>

Q. In the event that the domestic partnership is dissolved, what are the rights of the grandparents? Will there be a type of joinder that would allow them access to the children after the partnership is dissolved?

A. Assuming that both parents are recognized as legal parents, all grandparents should have the same rights as grandparents do when a heterosexual marriage is dissolved.

Q. Would a California custody order be entitled to full faith and credit under the U.S. Constitution?

A. States should give full faith and credit to California court rulings made under AB 205 California’s Domestic Partners Rights and Responsibility Act (2003). The law has not been tested in other states so we don’t know how those state courts will treat cases related to AB 205.

Q. In a partnership, a child is born after January 1, 2005, and is the biological child of one of the partners. Later they “divorce.” The biological mother does not want her ex-partner to have any contact with the child. This would be granted, correct? In heterosexual marriages, when divorcing, if the father is not the biological father, he is not granted contact without the mother’s permission.

A. The premise of this question is incorrect: In heterosexual marriages, when divorcing, the husband is absolutely granted contact with the child as the legal father except under very limited

and unusual circumstances (*i.e.*, when another man has come forward and established paternity within the first two years of the child's life). Similarly, if a child is born to lesbian domestic partners after January 1, 2005, and later the couple dissolves the partnership, the nonbiological mother will have a legal right to petition for joint custody and/or reasonable visitation. As with marital break-ups, the court that is hearing the case will look at bonding, attachment, etc., and determine what is in the best interests of the child.

Q. What do you see happening in the future regarding lesbian and gay stepfamilies and grandparents, and will these relationships be covered by similar laws?

A. Under AB 205, it would seem that the same rules should apply to stepparent and grandparents as are currently applied to marital families.

Q. Is there a flowchart?

A. The flowchart is the same as that for a dissolution of marriage. We don't currently have a flowchart prepared.

Q. How are you planning on educating the judges?

A. CJER has already offered one video broadcast on AB 205 in November 2004. That broadcast is available online at <http://www2.courtinfo.ca.gov/cjer/aocvtv/ab205/index.htm>.

Additional sessions are planned for the Family Law Institute and other CJER educational events.

Q. Is FL-980 mandatory and/or is it still a draft?

A. FL-980 is a draft. It demonstrates a way to conduct intake in a gender-neutral manner.

Q. In the broadcast, Deborah mentions a poster that is at her child's school. How can we obtain a copy?

A. Contact COLAGE (Children Of Lesbians And Gays Everywhere), found on the web at <http://www.colage.org/> or by mail, phone, etc., as noted below:

COLAGE
3543 18th Street, #1
San Francisco, CA 94110
USA

Phone: 415-861-KIDS (5437)

Fax: 415-255-8345

E-mail: colage@colage.org

Office Hours: Monday–Friday 10 a.m.–6 p.m. PST